

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ANDREW GETER,

Defendant-Appellant.

UNPUBLISHED

August 26, 2008

No. 278795

Oakland Circuit Court

LC No. 2007-212987-FC

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of kidnapping, MCL 750.349, assault with intent to do great bodily harm, MCL 750.84, felonious assault, MCL 750.82, malicious destruction of property, MCL 750.377a(1)(b)(i), driving with a suspended license, MCL 257.904(3)(a), assault and battery, MCL 750.81(1), and domestic violence, MCL 750.81(2). We affirm.

Defendant raises two issues on appeal, both concerning the trial court's jury instructions. Not only did defendant fail to preserve these issues with appropriate objections at trial, he waived any claim of error by expressly approving the instructions and stating that he had no objections. See *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002). In any event, even if we considered the issues, no plain error affecting defendant's substantial rights has been shown. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant argues that the trial court erred by failing to sua sponte instruct the jury regarding "the proper use and effect" of the complainant's prior inconsistent statements. While the failure to give a limiting instruction sua sponte was once deemed "reversible error," *People v Lamson*, 22 Mich App 365, 371; 177 NW2d 204 (1970), the law now provides that absent a request or an objection, the trial court is not required to give a limiting instruction sua sponte. MCL 768.29; *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999); *People v Coates*, 40 Mich App 212, 215-216; 198 NW2d 837 (1972). Moreover, there was no improper use of the prior inconsistent statements by the prosecutor. Rather, the statements were elicited by defendant to impeach the complainant's credibility. Further, while defense counsel used the inconsistent statements in his closing argument to attack the complainant's credibility, the prosecutor did not refer to the statements in her own closing argument. Therefore, defendant's substantial rights were not affected.

Defendant also argues that the trial court erroneously instructed the jury regarding the purposes for which it could consider evidence of defendant's prior acts of domestic violence against the complainant. The court instructed the jury in accordance with CJI2d 5.8c, which addresses other acts of domestic violence admitted under MCL 768.27b. Under that statute, when a defendant is charged with an offense involving domestic violence, other acts of domestic violence are admissible "for any purpose for which it is relevant," MCL 768.27b(1), including the defendant's propensity for committing the crime charged. *People v Pattison*, 276 Mich App 613, 615; 741 NW2d 558 (2007). Thus, there was no error.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly